



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
Region 1  
5 Post Office Square - Suite 100  
BOSTON, MA 02109-3912

**URGENT LEGAL MATTER - PROMPT ATTENTION REQUIRED**  
**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

January 28, 2013

Douglas Nelson, Sr.  
Nelson Farms, Inc.  
P.O. Box 1437  
Derby Line, VT 05830

**Re: Second Request for Information Pursuant to Section 308 of the Clean Water Act**

Dear Mr. Nelson:

This letter constitutes a "Second Request" for information pursuant to Section 308 of the Clean Water Act ("CWA" or "the Act"), 33 U.S.C. § 1318, by the U.S. Environmental Protection Agency ("EPA" or "Agency"). It serves to supplement EPA's previous request for information, which was sent to you on August 20, 2012 (hereafter "First Request"). The Second Request concerns the discharge and redeposit of soil, rocks, sand and/or other dredged or fill materials into wetlands located on the Nelsons' farm operation on the north and south sides of Coventry Station Road, in Coventry, Vermont (the "Farm Site"), also referred to as Farm #161, Tract 493. See Attachment A. In addition, the Second Request seeks information relating to discharges of biological materials, such as manure, silage leachate, and other pollutants into waters of the United States, including wetlands, from animal operations on the Farm Site.

Based on information from the U.S. Army Corps of Engineers (the "Corps") and U.S. Natural Resource Conservation Service ("NRCS"); the May 24, 2012 and November 27, 2012 site inspections by EPA; and your response to the First Request dated November 8, 2012, it appears that areas of wetlands north of Coventry Station Road, as well as approximately 44 acres of wetlands south of Coventry Station Road, have been clear cut, grubbed, filled, ditched, tilled and/or plowed for conversion into agricultural fields. EPA has also learned that silage leachate, manure, and/or other process wastewater at the Farm Site may be discharging into waters and/or wetlands under federal jurisdiction.

Under the provisions of the CWA, 33 U.S.C. § 1251 *et seq.*, the discharge of pollutants, including soil, sand, rocks and/or other dredged or fill material, and the re-deposition of dredged material (other than incidental fallback) during excavation and land clearing activities, into waters of the United States, including most wetlands, is unlawful except as authorized by, among other things, a permit issued pursuant to Section 404 of the CWA. See 33 U.S.C. § 1344. A federal permit is thus required under Section 404 of the Act, for those activities which result in the discharge of dredged or fill material into such waters and wetlands. The Corps is responsible



for accepting applications for and issuing or denying permits to perform such work, while EPA reviews and provides comments on permit applications received by the Corps. Both agencies share enforcement responsibilities under the Act, which provides administrative and judicial penalties for violations. In addition, the discharge of pollutants, including biological materials, into waters of the United States and jurisdictional wetlands, from a concentrated animal feeding operation ("CAFO") is a violation of the CWA, except when authorized by a permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342. A review of Corps, EPA, and state records shows that you did not obtain appropriate permits authorizing the activities and discharges which occurred in wetlands and waterways at the Farm Site. **Since a permit was not issued for the any of the above discharges, you and/or those acting on behalf of Nelson Farms, Inc., should not perform any additional work resulting in a discharge of dredged or fill material or other pollutants into wetlands or other waters of the United States.**

Section 308(a) of the CWA, 33 U.S.C. § 1318(a), provides EPA with the authority to require the disclosure of information necessary to determine whether any person has violated any provision of the Act. Pursuant to Section 308(a) you are hereby directed to provide the information requested in herein **within 20 days of receipt of this letter.** EPA also requests that you carefully review the First Request for information as well as your responses, dated November 8, 2012, many of which appear to be incomplete, and supplement answers to the questions presented in the First Request where appropriate. Please provide all additional information in response to the First Request **within 20 days of receipt of this letter.**

Please sign and return the enclosed "Declaration" swearing to the accuracy of your response to EPA's requests for information pursuant to Section 308. Note that the enclosed Declaration attests to the accuracy of (1) your responses to EPA's First Request for information, dated November 8, 2012; (2) any supplemental information provided in response to the First Request; and (3) your responses to the Second Request for information. If a consultant, attorney, or other agent responds to the Second Request, or provides supplemental information in response to the First Request, on your behalf please include a certification stating that such consultant, attorney, or agent has the authority to respond for you.

You may assert a business confidentiality claim with respect to part or all of the information submitted to EPA in the manner described at 40 C.F.R. § 2.203(b). Information covered by such a claim will be disclosed by EPA only to the extent, and by the means, of the procedures set forth in 40 C.F.R. 2, Subpart B. If no such claim accompanies the information when it is submitted to EPA, it may be made available to the public by EPA without further notice to you. Please note that state laws governing confidential business information may differ from the federal regulations.

Please be aware that failure to respond to fully and truthfully to the Second Request, as well as the First Request, may subject you to administrative and judicial enforcement action pursuant to Section 309 of the Act, 33 U.S.C. § 1319, including, among other things, imposition of administrative penalties up to \$177,500.

Lastly, EPA has enclosed a release form authorizing the Agency to obtain copies of all documents pertaining to the Farm Site and Nelson Farms, Inc., directly from the Farm Service

Agency ("FSA"). If you chose to release this information, please sign and return the enclosed form with your response to the Second Request.

Please send your responses to Second Request, supplemental responses to the First Request, the signed Declaration attesting to the accuracy of your responses, and the requested release by certified mail to Mr. Samuel Silverman, Deputy Director, Office of Environmental Stewardship, (Attn: Denise Leonard), U.S. EPA Region 1, Post Office Square, Suite 100, Mail Code OES05-1, Boston, Massachusetts 02109-3912.

If you have any questions concerning the required information, please contact Denise Leonard of my staff at (617) 918-1719. Please direct any legal questions to Laura Beveridge, Enforcement Counsel, at (617) 918-1345.

Sincerely,



Samuel Silverman, Deputy Director  
Office of Environmental Stewardship

Enclosures: Attachments A - I  
Declaration – Agent Certification for the November 8, 2012 Response to First  
EPA Request for Information  
Declaration – Agent Certification for this Second EPA Request for Information  
Farm Services Agency Release  
Copy of Portions of the November 8, 2012 Response to First EPA Request for  
Information

Cc:

Marty Abair  
U.S. Army Corps of Engineers  
Vermont Project Office  
8 Carmichael St.  
Suite 205  
Essex Junction, VT 05452

Alan Quackenbush  
VT Department of Environmental Conservation  
Water Quality Division – Wetlands Section  
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USDA – NRCS  
59 Waterfront Plaza, Suite 11  
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5 Post Office Square  
Mail Code: OES04-2  
Boston, MA 02109-3912



## Second Request For Information

Pursuant to Section 308 of the CWA, 33 U.S.C. § 1318, please respond fully and accurately to each of the requests for information and questions below. Note that, as used in this request, **the term "Farm Site" includes all property, both on the north and south sides of Coventry Station Road**, included in Farm #161, Tract 493.

1. Provide copies of all maps or plans prepared by or for NRCS or the FSA depicting up-to-date field labels and designations for Farm #161, Tract 493.
2. Provide copies of all deeds relating to the purchase of the Farm Site in 1990. Provide the address and name of the contact person at Elvara, N.V., from whom the Farm Site was purchased.
3. State whether the Farm Site is owned by Nelson Farms, Inc., Douglas Nelson, Sr., individually, or some other person or entity. If another person or entity, please identify such person or entity and his/its mailing address.
4. Describe the uses at the Farm Site **at the time of purchase in 1990**. Specifically, using the enclosed map labeled "**Attachment A (Question 4)**," identify the farm fields in agricultural production, their acreage, and the types of agriculture conducted on each field at the time of purchase.
5. Please describe in detail the role(s) of Douglas Nelson, Sr., Douglas Nelson, Jr., Richard Nelson, Susan Nelson, and Cyril Nelson in management of the Farm Site between the date of purchase and the present. In addition, please indicate the ownership interest of each individual in Nelson Farms, Inc.
6. Provide all farm plans prepared for the Farm Site at any time, including but not limited to farm plans prepared by NRCS and the Vermont Agency of Agriculture, Food and Markets ("AAFM").
7. It is EPA's understanding, based on your November 8, 2012 response to the First Request, that you and/or Nelson Farms, Inc. hired Jeff Parsons of Arrowhead Environmental for advice regarding the Farm Site. Please provide copies of all written and electronic correspondence **between** Mr. Parsons (and any other employee or agent of Arrowhead Environmental) **and** Douglas Nelson, Sr., Douglas Nelson, Jr., Richard Nelson, Susan Nelson, Cyril Nelson, and/or any other employee or agent of Nelson Farms, Inc. In addition, provide all memos, notes, and/or descriptions of verbal conversations you, or any other person acting on your behalf or on behalf of Nelson Farms, Inc., had with Mr. Parsons and/or Arrowhead Environmental.
8. Provide copies of all reports or delineations regarding the presence and/or extent of wetlands at the Farm Site prepared at any time by Jeff Parsons or Arrowhead Environmental.

9. Provide all reports, delineations, and correspondence prepared at any time by NRCS, the State of Vermont, or any other state or federal government agency regarding the presence and/or extent of wetlands at the Farm Site.
10. Provide all survey reports and engineering and construction plans prepared at any time by any individual, private entity, government agency that pertain to the Farm Site.
11. In your November 8, 2012 response to the First Request, you stated that "stumpage was sold from the site and stumps began to be removed from the site in the fall of 2011, this was completed sometime in May." Please expand on your response as follows:
  - a. What portion of the Farm Site does this statement relate to? Areas south of Coventry Station Road? Areas north of Coventry Station Road? Or both?
  - b. Please identify the location of the stumped areas referred to in this statement on the enclosed photograph labeled "**Attachment B (Question 11).**"
  - c. Describe the equipment used to remove stumps from the Farm Site, and provide the name and contact information for the individual(s) who operated the equipment used to remove stumps from the Farm Site;
  - d. Identify the location(s) on **Attachment B** where the stumps were disposed of, or, if sold, provide the name and address of the persons(s) to whom the stumpage was sold, the date(s) of sale, and the total dollar amount received for the stumpage.
  - e. State whether the proceeds from the stumpage went to Nelson Farms, Inc., to Douglas Nelson, Sr., or to any other individual or entity.
  - f. Was any other material associated with or excavated during the stumping and/or grubbing deposited on the Farm Site? If so, where?
12. In your November 8, 2012, response to the First Request, you stated that "over 100 large loads of corn silage – 1500 tons – was removed from this land in late September 2012." Please expand on your response as follows:
  - a. State whether the "land" referred to in your November 8, 2012, statement refers to the areas south of Coventry Station Road, areas north of Coventry Station Road, or both. Please identify the location of "this land" on the photograph labeled "**Attachment C (Question 12).**"
  - b. What was the total dollar value of the corn silage removed?
  - c. If any of the silage was sold, state the amount of silage sold, the dollar amount received, and names and contact information of the individual(s) or entities to which it was sold.
  - d. State whether proceeds from the silage went to Nelson Farms, Inc., to Douglas Nelson, Sr., or to any other individual or entity.
13. With regard to the south side of Coventry Station Road, respond to the following questions. When directed, please use the enclosed photograph labeled "**Attachment D (Question 13).**"



- a. Using **Attachment D**, identify the location of all areas of the Farm Site south of Coventry Station Road that have been stumped and/or grubbed.
- b. State the date(s) when each of these areas was stumped and/or grubbed. Describe the equipment used to stump and grub the area(s), and provide the name(s) and contact information of the individual(s) who operated the equipment.
- c. Using **Attachment D**, identify the location where the stumps were disposed of. (If the location is not shown on Attachment D, please provide a written description.) If the stumpage was sold, provide the name and address of the persons(s) to whom the stumpage was sold, the date(s) of sale, and the total dollar amount received for the stumpage.
- d. State whether proceeds from these sales went to Nelson Farms, Inc., Douglas Nelson, Sr., or to any other entity or individual.
- e. Was any other material associated with the excavation, stumping and/or grubbing deposited on the Farm Site? If so, indicate where on **Attachment D**. (If the location is not shown on Attachment D, please provide a written description.)
- f. Using **Attachment D**, identify areas of the Farm Site south of Coventry Station Road that have been leveled or graded.
- g. Provide the dates when these areas were leveled or graded. Describe the equipment used to level and/or grade these areas, and provide the name(s) and contact information of the individual(s) who operated the equipment.
- h. Indicate on **Attachment D** where any soil or other material removed from these areas during leveling or grading was deposited. (If the location is not shown on Attachment D, please provide a written description.)
- i. What crops have been grown on the Farm Site south of Coventry Station Road? Using **Attachment D**, identify the areas where each of these crops has been grown.
- j. Describe the equipment used to till these areas, if any, and state how deeply the soil was tilled. Provide the name(s) and contact information of the individuals who operated the tilling equipment.
- k. Describe the equipment used in the planting and harvesting of crops grown in these areas. Provide the name(s) and contact information of the individual(s) who operated such equipment.
- l. State the date(s) when crops grown in these areas were harvested.
- m. Provide the total dollar value of the crops harvested from these areas. If any of the crops were sold, state the name and address of the person(s) to whom the crops from these areas were sold and the total dollar amount received.
- n. State whether proceeds from these sales went to Nelson Farms, Inc., Douglas Nelson, Sr., or to any other entity or individual.

14. With regard to the north side of Coventry Station Road, respond to the following questions. When directed, please use the enclosed photograph labeled "**Attachment E (Question 14).**"

- a. Using **Attachment E**, identify the location of all areas of the Farm Site north of Coventry Station Road that have been stumped and/or grubbed.

- b. State the date(s) when each of these areas was stumped and/or grubbed. Describe the equipment used to stump and grub the area(s) and provide the name(s) and contact information of the individual(s) who operated the equipment.
  - c. Using **Attachment E**, identify the location where the stumps were disposed of. (If the location is not shown on Attachment E, please provide a written description.) If the stumpage was sold, provide the name and address of the persons(s) to whom the stumpage was sold, the date(s) of sale, and the total dollar amount received for the stumpage.
  - d. State whether proceeds from these sales went to Nelson Farms, Inc., to you individual, or to any other entity or individual.
  - e. Was any other material associated with or excavated during the stumping and/or grubbing deposited on the Farm Site? If so, indicate where on **Attachment E**. (If the location is not shown on Attachment E, please provide a written description.)
  - f. Using **Attachment E**, identify areas of the Farm Site north of Coventry Station Road that have been leveled or graded.
  - g. Provide the dates when these areas were leveled and/or graded. Describe the equipment used to level and/or grade these areas and provide the name and contact information for the individual(s) who operated the equipment.
  - h. Indicate on **Attachment E** where any soil or other material removed from these areas during leveling or grading was deposited. (If the location is not shown on Attachment E, please provide a written description.)
  - i. What crops have been grown on the Farm Site north of Coventry Station Road? Using **Attachment E**, identify the areas where each of these crops has been grown.
  - j. Describe the equipment used to till these areas, if any, and state how deeply the soil was tilled. Provide the name(s) and contact information of the individuals who operated the tilling equipment.
  - k. Describe the equipment used in the planting and harvesting of crops grown in these areas. Provide the name(s) and contact information of the individual(s) who operated the planting and harvesting equipment.
  - l. Provide the date(s) when crops grown in these areas were harvested.
  - m. Provide the total dollar amount of the crops harvested from these areas. If any of the crops were sold, state the name and address of the person(s) to whom the crops from these areas were sold and the total dollar amount received.
  - n. State whether proceeds from these sales went to Nelson Farms, Inc., Douglas Nelson, Sr., or to any other entity or individual.
15. On the enclosed photograph labeled "**Attachment F (Question 15)**," identify all locations where surface drainage has been installed, including, but not limited to, ditches, channels, swales, and the like.
- a. Provide the dates of installation of surface drainage features. Describe the equipment used to install all surface drainage, and provide the name(s) and contact information of the individual(s) who operated that equipment.
  - b. Identify the location(s) on **Attachment F** where soil or other materials excavated during the installation of the surface drainage was deposited. (If



the location is not shown on Attachment F, please provide a written description.)

16. On **Attachment G (Question 16)**, identify all locations on the Farm Site where subsurface drainage has been installed, including but not limited to tiles, pipes, crushed rock, and/or gravel.
- Provide the dates of installation, and describe the type of subsurface drainage installed. Describe the equipment used to install subsurface drainage, and provide the date(s) of installation and the names and contact information for the individual(s) who operated that equipment.
  - Identify the location(s) on **Attachment G** where soil or other materials excavated during the installation of the subsurface drainage was deposited. (If the location is not shown on Attachment G, please provide a written description.)
17. In your November 8, 2012 response to the First Request, you stated that "a very shallow diversion ditch was put in place to move the water to a roadside culvert." Please expand on your response as follows:
- Identify the location of the shallow diversion ditch and the roadside culvert on the photograph attached as "**Attachment H (Question 17)**."
  - Describe: (1) the equipment used to dig the diversion ditch, (2) the length of the ditch, and (3) the depth of the ditch. Provide the name(s) and contact information of the individual(s) who operated the equipment used to dig the diversion ditch.
  - Indicate on **Attachment H** where the material that was excavated from the ditch was placed. (If the location is not shown on Attachment H, please provide a written description.)
18. During the November 27, 2012 site visit, EPA observed the existence of a channel on the north side of the Farm Site which empties into a natural watercourse at the forest edge. This channel is identified as "Channel A" on the enclosed photography labeled "**Attachment I (Question 18)**." Please provide the following information:
- Provide the date(s) of work, and describe the work done in Channel A.
  - Identify any equipment used to perform work in Channel A and provide the name(s) and contact information of the individual(s) who operated the equipment or otherwise performed any work in Channel A.
  - Describe the intended purpose of Channel A.
  - How was the location of Channel A selected?
  - State whether a manmade channel or natural watercourse existed in the general location of Channel A: (1) at the time the Farm Site was purchased in 1990, (2) prior to the date the land was cleared, and/or (3) prior to the date of the work described above.
  - EPA also observed the existence of smaller channels carrying water from the east and the west into Channel A. When were these channels excavated? How were the locations of these channels selected? Describe the intended purpose of these channels.

19. Provide the date and dollar amount of all farm subsidies and other benefits received from federal and/or state agencies since 2008, including, but not limited to, subsidies and/or benefits received from the FSA, AAFM, and the Milk Income Loss Contract ("MILC") program.
20. Provide copies of all documentation regarding work that occurred at the Farm Site, including but not limited to:
  - a. Reports or other documents provided to AAFM;
  - b. Reports or other documents provided to the FSA;
  - c. Written and electronic correspondence **between** you, and/or anyone acting on your behalf or on the behalf of Nelson Farms, Inc., **and** AAFM and FSA; and
  - d. Memos, notes, and/or descriptions of verbal conversations **between** you, and/or anyone acting on your behalf or on behalf of Nelson Farms, Inc., **and** AAFM and FSA (including the date that they occurred) pertaining to proposed or existing work at the Farm Site.
21. Provide copies of any wetlands delineations sought or obtained from NRCS prepared at any time for any other lands owned or farmed by Nelson Farms, Inc., Douglas Nelson, Sr., Douglas Nelson, Jr., Richard Nelson, Susan Nelson, and/or Cyril Nelson.
22. Please describe in detail all past projects at any location involving work in wetlands or waters for which you, any other person or entity with an ownership interest in the Farm Site, or anyone who is involved in management of the Farm Site, has ever sought a permit from the Corps. Your answer should include, but not be limited to, the after-the-fact permit issued to Douglas Nelson and/or Nelson Farms, Inc., in connection with fill in wetlands and/or Crystal Brook at a site off Route 5 in Derby Line, Vermont.

With respect to **each** such project, provide:

- a. The name and location of the property,
- b. The date of the application or transaction,
- c. The type of activity for which authorization was sought,
- d. A copy of any permits issued, and
- e. A copy of all documents related to your communications with the Corps.

**Note:** As used in Paragraphs 23-25, the terms below are defined as follows:

**"Process wastewater"** means water directly or indirectly used in the operation of the facility (here the Farm Site) for any or all of the following: spillage or overflow from animal watering systems; washing, cleaning, or flushing pens, barns, manure pits, or other animal feeding operation facility aspects/structures; direct contact swimming, washing or spray cooling of animals; and dust control. "Process wastewater" also includes any water (e.g., rain, snow, snow melt, water used in the facility's operation, *etc.*) which comes into contact with any raw



materials, products, or byproducts including manure, litter, feed, milk, eggs, bedding, or other material or product used in, or resulting from, the confinement of animals. See 40 C.F.R. § 122.23.

**“Manure”** includes animal waste (*i.e.*, solid or liquid animal waste), bedding, compost, and raw materials or other materials (used in or otherwise resulting from the confinement of animals) commingled with manure or set aside for disposal (which includes land application). *Id.*

23. Provide the following information:

- a. The type of animal(s) produced at the Farm Site;
- b. The number, type, and location of animal confinement structures (*i.e.*, number of barns, houses, pens, feedlots, etc.) at the Farm Site;
- c. The number, type, and location of manure containment structures at the Farm Site; please indicate the storage capacity for each containment structure;
- d. The number, type, capacity, and location of silage storage areas or structures at the Farm Site;
- e. The total number of animals the Farm Site was designed to confine;
- f. The total number of animals the Farm Site is permitted to confine (if applicable);
- g. The total number of animals actually at the Farm Site currently;
- h. A copy of all AAFM permits for the Farm Site;
- i. Indicate whether you, or anyone acting on your behalf or on behalf of Nelson Farms, Inc., land applies “manure” and/or “process wastewater” (as defined above) at the Farm Site and, if so, on what fields;
- j. A copy of the Farm Site’s nutrient management plan; and
- k. A copy of the Farm Site’s land application records since 2008.

24. State whether animals at the Farm Site have access to or otherwise come in contact with streams, wetlands, or other waters at the Farm Site, and if so, which waters.

25. State whether “manure” and/or “process wastewaters” (as defined above) at the Farm Site flow, or have in the past flowed to, streams, wetlands, or other waters at the Farm Site through a man-made ditch, flushing system, or other man-made device. Your answer should include any flows that may have occurred during periods of high precipitation or as a result of snow melt.

26. Please carefully review EPA’s First Request for information issued pursuant to Section 308 of the CWA, 33 U.S.C. § 1318, dated August 20, 2012, as well as your answers in response, dated November 8, 2012. Please supplement your answers in response to the First Request as appropriate.